

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

SYNERGY RESTAURANT)	
GROUP, LLC d/b/a RALLY’S,)	
)	
Plaintiff,)	
V.)	Case No. 1:20-cv-190-HAB-SLC
)	
)	
NATIONWIDE MUTUAL)	
INSURANCE COMPANY and)	
ALLIED INSURANCE)	
COMPANY OF AMERICA,)	
Defendants.)	

AMENDED COMPLAINT

COMES NOW the Plaintiff, Synergy Restaurant Group, LLC d/b/a Rally’s (“Synergy”) by counsel, and for its causes of action against the Defendants, Nationwide Mutual Insurance Company (“Nationwide”) and Allied Insurance Company of America (“Allied”), states and alleges as follows:

I. INTRODUCTION

1. Synergy is an Indiana limited liability company with its headquarters located in Babylon, New York, which operates, among other facilities, a Rally’s restaurant located at 5607 South Anthony Boulevard in Fort Wayne, Indiana. On or about June 7, 2019, there was a fire at the Rally’s Restaurant located at 5607 South Anthony Boulevard which caused substantial damage to the restaurant. At the time of the fire, Synergy was an insured under a policy of insurance with Nationwide and Allied, a copy of which is attached hereto as *Exhibit 1*.

Synergy contends that Nationwide and Allied have failed to pay approximately one hundred and fifty-three thousand dollars (\$153,000) due under the Policy coverages relating to damages from the fire. Synergy has made demand on Nationwide and Allied for the payment but

those insurance companies have refused and continue to refuse to pay same. A copy of Synergy's counsel's January 27, 2020 letter to Nationwide and Allied is attached hereto as ***Exhibit 2***.

In addition to its claim for breach of the insurance contract between the parties, Synergy is also pursuing a claim against Nationwide and Allied for breach of the duty of good faith and fair dealing with respect to the handling of the claim.

Synergy seeks all available legal and equitable relief including, but not limited to, compensatory and punitive damages, pre-judgment interest, costs of this action, and any other relief the Court deems appropriate under the circumstances.

II. PARTIES

2. Synergy is a limited liability company organized and existing under and by virtue of the laws of the State of Indiana with its principal office located at 103 Cooper Street, Babylon, New York 11702 and which operates a Rally's Restaurant located at 5607 South Anthony Boulevard in Fort Wayne, Indiana. Synergy has two members, Robert Ruggieri and Ding Wang, both of whom are residents and citizens of the State of New York.

3. Nationwide is an insurance company licensed to do business in the State of Indiana with its principal headquarters located in Columbus, Ohio.

4. Allied is an insurance company licensed to do business in the State of Indiana with its headquarters located in Columbus, Ohio. At all times relevant hereto, Nationwide was the parent company of Allied.

III. FACTS

5. Synergy incorporates by reference paragraphs 1-4 of this Complaint as if same were fully set forth herein.

6. On or about December, 2018, Synergy entered into an insurance agreement with Nationwide and Allied insuring, among other things, Synergy's Rally's restaurant located at 5607 South Anthony Boulevard in Fort Wayne, Indiana from such perils as fire. A copy of the Insurance Commercial Package ACP 30-1-8571932 is attached hereto as ***Exhibit 1***.

7. On or about June 7, 2019, the Rally's restaurant located at 5607 South Anthony Boulevard in Fort Wayne, Indiana suffered substantial damage from a fire.

8. After the fire, the Defendants, by and through their adjuster, Jason Stein ("Stein"), and perhaps other agents and employees, hired their own structural engineer, EFI Global ("EFI"), to assess the damage.

9. The Defendants completed an "initial quote" of the damage before EFI even provided drawings and information necessary to properly assess the damage.

10. When the drawings of EFI finally arrived, they did not match the information on the "initial quote" prepared by Defendants.

11. Synergy contacted Lawrence Building Corp ("LBC") to provide a proposal for the repair of the fire damage based on actual engineering drawings.

12. Synergy provided the LBC proposal to the Defendants' adjuster, Stein, via email, and at no time did Stein reject the proposal or otherwise indicate to Synergy that it was not acceptable. Stein emailed LBC several times after the proposal was submitted to him and inquired as to how the work was going and whether Synergy had an ETA on re-opening. After work was done, Nationwide refused to pay for the work done per the proposal.

13. LBC performed work to repair the restaurant for several weeks and, for no known reason, the Defendants refused to pay for the work causing LBC to threaten to stop work on the project on or about September 27, 2019.

14. Stein repeatedly promised that payment would be “approved this week” and yet payment was not made, causing the job to be shut down and the electrical contractor to threaten to file a mechanic’s lien on Synergy’s property. When Nationwide and Allied refused to pay, Synergy stepped in and paid the open balances to LBC and its subcontractors to avoid liens and get the business re-opened (and, coincidentally, saving Defendants from further business loss reimbursement).

15. The Defendants are apparently taking the position that they should not have to pay for the replacement of the electrical and wiring even though required by the Electrical Inspector for Allen County because, according to the Defendants, the wiring was old and needed to be replaced.

16. Attached to the Complaint as ***Exhibit 3*** is an itemization of the project budget and “off budget” for the repair of the fire damage. The LBC initial budget of \$223,592.02 was never objected to by Stein and yet, although LBC completed all of the work, only two payments were made in the amounts of \$39,862.94 and \$44,293.40.

17. As shown by ***Exhibit 3***, Synergy is owed \$153,650.84 under the policy and yet Defendants refuse to pay the amounts due and owing for no reason, much less a good reason.

18. Synergy has had substantial communication with Nationwide and Allied regarding payment of its claim and has made repeated demands for payment, however, no payment has been forthcoming.

19. Synergy has complied with all conditions precedent under the policy.

20. Nationwide and Allied have breached their duties of good faith and fair dealing with respect to the handling and payment of this claim, causing damage to Synergy.

21. The conduct of Nationwide and Allied in not properly handling or paying the claim was willful, malicious, and oppressive entitling Synergy to punitive damages.

IV. STATEMENT OF CLAIMS

COUNT I.

BREACH OF CONTRACT

22. Synergy incorporates by reference paragraphs 1-21 of this Complaint as if same were fully set forth herein.

23. Synergy had an insurance agreement with Nationwide and Allied with respect to the Rally's restaurant located at 5607 South Anthony Boulevard in Fort Wayne, Indiana for damages from, among other things, the peril of fire.

24. Nationwide and Allied breached the insurance agreement with Synergy by failing to pay \$153,650.84 in payments due under the policy.

25. As a result of the breach of contract by Nationwide and Allied, Synergy has been damaged.

COUNT II.

**BREACH OF THE DUTY OF
GOOD FAITH AND FAIR DEALING**

26. Synergy incorporates by reference paragraphs 1-25 of this Complaint as if same were fully set forth herein.

27. Nationwide and Allied breached their duties of good faith and fair dealing with respect to the handling and payment of the claim of Synergy with respect to the fire at its restaurant.

28. As a result of Nationwide and Allied's failure to comply with their duties of good faith and fair dealing, Synergy has been damaged.

29. Because of the oppressive, willful and malicious conduct of Nationwide and Allied, Synergy is entitled to punitive damages in an amount sufficient to deter them from such future conduct.

V. PRAYER FOR RELIEF

WHEREFORE, Synergy prays for judgment against the Defendants, and each of them, and for the following relief.

- a) damages for the breach of contract;
- b) pre-judgment interest;
- c) compensatory damages related to the breach of duty of good faith and fair dealing;
- d) punitive damages;
- e) costs of this action; and
- f) all other relief appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, Synergy Restaurant Group, LLC d/b/a Rally's, hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

THEISEN & ASSOCIATES, LLC

/s/John C. Theisen

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby swears and affirms that a true and correct copy of the above was served upon the below parties via the Court's ECF System on this 14th day of August, 2020:

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/s/John C. Theisen _____
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